

PATENT APPLICATION

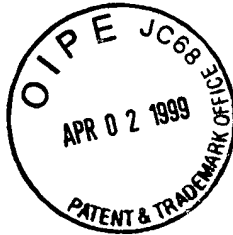
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Eric A. Johnson et al.

Appln. No.: 08/458,019

Filed: 1 June 1995



Group Art Unit: 1651

Examiner: Lilling

#31
Decl w/ Pet.
4/9/99

For: PROCESSES FOR IN VIVO PREPARATION OF ASTAXANTHIN AND PHAFFIA RHODOZYMA YEAST OF ENHANCED ASTAXANTHIN CONTENT

PETITION PURSUANT TO 37 C.F.R. §1.47(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

The undersigned petitions to have the attached Declaration Under 37 C.F.R. §131 proceed in the absence of signature by all of the named co-inventors. Pursuant to MPEP §715.04, although three of the six named co-inventors are unavailable, that unavailability is excusable and the Rule 131 Declaration is to be entered and considered on the merits with the remainder of the co-inventors executing the Declaration.

Statement of Facts

1. The instant application names Eric A. Johnson, Huei-hsiung Yang, Beril Geldiay-Tuncer, William T. Hall, William Schreiber and Kwok Hu as co-inventors.

2. The instant application is the progeny of an application naming those six as co-inventors which was filed in 1988.

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3. The co-inventors were employees of Igene Biotechnology, Inc., Columbia, MD, and assigned their rights in that first filed application of 1988 to Igene.

4. In the outstanding Office Action in the instant application, a 35 U.S.C. §102(e) rejection was lodged.

5. The owner of the instant application decided to file a 37 C.F.R. §131 Declaration to have the patent relied to ground the rejection rendered ineffective as to the instant application.

6. Eric A. Johnson is unavailable to assess the evidence and to execute the Rule 131 Declaration in a timely fashion.

7. Dr. Johnson did contribute to the development of the Ant 1-4 strain of the instant application and referred to Exhibits B and D of the Rule 131 Declaration.

8. The address of Dr. Eric Johnson is Food Research Institute, University of Wisconsin, 1925 Willow Drive, Madison, WI 53706.

9. After a diligent search, Igene, was unable to locate a current address for Beril Geldiay-Tuncer. An internet search was not fruitful.

10. Exhibits B-D of the attached Rule 131 Declaration are from notebooks of Beril Geldiay-Tuncer.

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11. The last known address of Beril Geldiay Tuncer is 6348 SOR. No: 13/7, Bostanli-Karsiyake, 12 Mir, Turkey as noted on the Declaration executed 10 December 1990.

12. David Schreiber is unavailable to execute the Rule 131 Declaration at the recommendation of the Solicitor's Office pursuant to 35 U.S.C. §4, although all of his rights as a co-inventor were assigned to Igene prior to his employment at the Patent Office.

13. David Schreiber was a supervisor of Beril Geldiay-Tuncer.

14. The address of David Schreiber is 205 Raccoon Run Court, Hanover, MD 21076.

Relief Requested

It is respectfully requested that the attached Rule 131 Declaration executed by three of the six named co-inventors be entered and considered on the merits because of the excused unavailability of the remaining three co-inventors.

Conclusions

The attached Rule 131 Declaration could not be executed by all of the named co-inventors because of the unavailability of Eric A. Johnson, Beril Geldiay-Tuncer and David Schreiber. However, the lack of those signatures is excusable and the Rule 131 Declaration should be entered and considered on the merits.

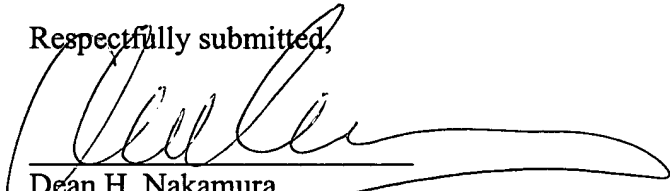
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Please charge the fee of \$130.00 fee set forth in §1.17(i) to Deposit Account No. 19-4880. Any credits or additional fee requirements associated with the instant Petition are to be charged to Deposit Account No. 19-4880.

A duplicate copy of the instant petition is attached hereto.

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Respectfully submitted,



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Date: 2 April 1999